

SENATE BILL NO. 174

INTRODUCED BY J. ELLIOTT

BY REQUEST OF THE DEPARTMENT OF REVENUE

SENATE TAXATION

EXHIBIT NO. 3DATE 3-16-07FILE NO. SB-174

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REVENUE LAWS; DEFINING "PERSON" TO INCLUDE DISREGARDED ENTITIES; REVISING INFORMATION SHARING AMONG STATE AGENCIES; CLARIFYING PAYMENT OF INTEREST ON LATE-FILED RETURNS; ~~CLARIFYING THE TAXATION OF SHAREHOLDERS OF S. CORPORATIONS THAT ARE TRUSTS; CONFORMING THE TREATMENT AND TAXATION OF ELECTING SMALL BUSINESS TRUSTS TO FEDERAL LAW;~~ IMPOSING AN EXCISE TAX ON S. CORPORATIONS ON CERTAIN ALLOCATIONS OR OWNERSHIP OF S. CORPORATION STOCK OR EQUITY PROHIBITED BY FEDERAL LAW; PROVIDING PENALTIES FOR FRAUDULENT TAX REPORTING AND SUBSTANTIAL UNDERREPORTING OF TAX LIABILITY; ~~PROVIDING PENALTIES FOR INACCURATE TAX REPORTING;~~ CLARIFYING QUALIFICATIONS FOR DEPENDENTS WITH REGARD TO INDIVIDUAL INCOME TAX EXEMPTIONS; LIMITING THE FEDERAL DEDUCTION FOR COMPUTATION OF TAXABLE INCOME OF ESTATES AND TRUSTS; EXTENDING THE TIME PERIOD TO REQUEST REFUNDS FOR OVERPAYMENT OF INDIVIDUAL INCOME TAXES; CLARIFYING THE ALLOWED EXTENSION OF TIME FOR FILING AN INDIVIDUAL INCOME TAX RETURN; REQUIRING INFORMATION AGENTS TO REPORT PROCEEDS FROM CERTAIN REAL ESTATE TRANSACTIONS; REMOVING THE REQUIREMENT FOR COAL MINE OPERATORS TO REPORT TONS OF COAL SOLD; CLARIFYING THE REQUIREMENT FOR FILING OF DUPLICATE UNITED STATES ESTATE TAX RETURNS WITH THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 15-1-102, 15-1-201, 15-1-216, ~~45-30-404~~, 15-30-112, ~~45-30-135~~, 15-30-136, ~~45-30-137~~, 15-30-144, 15-30-149, 15-30-301, 15-30-303, 15-31-511, 15-35-104, 15-36-313, 15-39-105, 15-39-107, ~~47-7-502~~, AND 72-3-1006, MCA; ~~REPEALING SECTION 15-4-113, MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-1-102, MCA, is amended to read:

"15-1-102. Person defined. As used in this title, (except chapters 30 and 31), unless the context indicates otherwise, the term "person" means an individual, corporation, (domestic or foreign), partnership, disregarded entity as defined in 15-30-101, association, joint-stock company, or syndicate."

Section 2. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

(c) The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

(d) The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department ~~shall~~ may collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department ~~shall~~ may examine the records of all municipal corporations for purposes considered necessary or helpful.

(4) (a) Unless otherwise provided by law and except as provided in subsection (4)(b), upon written request of the department, state agencies shall provide to the department relevant taxpayer information in their possession.

(b) Unless otherwise provided by law, confidential criminal justice information, as defined in 44-5-103, in the possession of a state agency that may be evidence of fraud pursuant to 15-1-216 must be provided to the appropriate department personnel.

(5) Unless otherwise provided by law, the department may exchange updated taxpayer name and address information with other state agencies."

Section 3. Section 15-1-216, MCA, is amended to read:

"15-1-216. Uniform penalty and interest assessments for violation of tax provisions -- applicability -- exceptions -- uniform provision for interest on overpayments. (1) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of \$50 or the amount of the tax due, whichever is less.

(2) (a) Except as provided in subsection (2)(b), a person who fails to pay a tax when due must be assessed a late payment penalty of ~~4.2%~~ 1% a month ~~or fraction of a month~~ on the unpaid tax. The penalty may not exceed ~~42%~~ 10% of the tax due.

(b) A person who fails to pay a tax when due under chapter 30, part 2, chapter 53, chapter 65, or chapter 68 must be assessed a late payment penalty of 1.5% a month ~~or fraction of a month~~ on the unpaid tax. The penalty may not exceed 15% of the tax due.

(C) THE PENALTIES PROVIDED IN SUBSECTIONS (2)(A) AND (2)(B) ON DELINQUENT TAXES AND ON DEFICIENCY ASSESSMENTS ARE COMPUTED FROM THE ORIGINAL DUE DATE OF THE RETURN UNTIL THE TAX IS PAID. THE PENALTY ACCRUES DAILY ON THE UNPAID TAX FROM THE ORIGINAL DUE DATE OF THE RETURN REGARDLESS OF WHETHER THE TAXPAYER HAS RECEIVED AN EXTENSION OF TIME FOR FILING THE RETURN.

(e)(D) (i) There is a penalty for substantial understatement of income tax liability under chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the greater of 10% of the tax required to be shown on the return for the tax year or \$1,500 \$2,500.

(ii) There is a penalty for substantial understatement of tax liability under those taxes and matters subject to 15-1-211(1)(a), except chapter 30, part 1, for any tax year if the amount of the understatement for the tax year exceeds the lesser of 10% of the tax required to be shown on the return for the tax year or \$500,000.

(iii) Except as provided in (2)(c)(iv) (2)(D)(IV), the penalty for substantial underpayment of tax liability must be assessed at 20% of the portion of the underpayment to which this section applies.

(iv) The penalty for substantial underpayment of tax liability due to fraud, as defined in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, must be assessed at 75% of the portion of the underpayment to which this section applies.

(c)(d) The penalty imposed under subsection (2)(a) or (2)(b) accrues on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing a return.

(3) A person who fails to accurately report any required return or report information for taxes and matters set forth in 15-1-211(1)(a) must be assessed an inaccurate report penalty of \$50 for each incidence of

~~inaccuracy on each return or report. If the inaccurate report is corrected within 6 months of the due date of the original return or report, the department may waive the inaccurate report penalty pursuant to 15-1-206.~~

~~(3)(4)(3)~~ A person who purposely or knowingly, as those terms are defined in 45-2-101, or fraudulently, as described in section 7206 of the Internal Revenue Code, 26 U.S.C. 7206, fails to file a return when due or fails to file a return within 60 days after receiving written notice from the department that a return must be filed is liable for an additional penalty of not less than ~~\$1,000 or more than \$10,000~~ the greater of \$1,000 or 15% of the tax liability a month. The penalty may not exceed 75% of the tax liability. The department may bring an action in the name of the state to recover the penalty and any delinquent taxes.

~~(5)(4)(a)~~ An individual who purposely or knowingly files, renders, or signs a false or fraudulent return or PURPOSELY OR KNOWINGLY supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than \$20,000, imprisoned for not more than 5 years, or both.

~~(b)~~ A corporation, partnership, or other entity, an officer or employee of a corporation, or a member or employee of a partnership or other entity that purposely or knowingly files, renders, or signs a false or fraudulent return or PURPOSELY OR KNOWINGLY supplies false or fraudulent information with respect to a return, report, or investigation is guilty of a felony and upon conviction shall be fined not more than \$50,000, imprisoned for not more than 5 years, or both.

~~(4)(6)(5)~~ (a) Interest on taxes not paid when due must be assessed by the department. The department shall determine the interest rates established under subsection ~~(4)(a)(i)~~ ~~(6)(a)(i)~~ ~~(5)(A)(I)~~ for each calendar year by rule subject to the conditions of this subsection ~~(4)(a)~~ ~~(6)(a)~~ ~~(5)(A)~~. Interest rates on taxes not paid when due for a calendar year are as follows:

(i) For individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is equal to the underpayment rate for individual taxpayers established by the secretary of the United States department of the treasury pursuant to section 6621 of the Internal Revenue Code, 26 U.S.C. 6621, for the fourth quarter of the preceding year or 8%, whichever is greater.

(ii) For all taxes other than individual income taxes not paid when due, including delinquent taxes and deficiency assessments, the interest rate is 12% A YEAR.

(b) Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid. Interest accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return.

~~(5)(7)~~ ~~(6)~~ (a) Except as provided in subsection ~~(5)(b)~~ ~~(7)(b)~~ ~~(6)(B)~~, this section applies to taxes, fees, and

other assessments imposed under Titles 15 and 16 [and 85-2-276].

(b) This section does not apply to:

(i) property taxes; or

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70.

~~(6)~~(8) Any changes to interest rates apply to any current outstanding tax balance, regardless of the rate in effect at the time the tax accrued.

~~(7)~~(9) Penalty and interest must be calculated and assessed commencing with the due date of the return.

~~(8)~~(10) Deficiency assessments are due and payable 30 days from the date of the deficiency assessment.

~~(9)~~(11) Interest allowed for the overpayment of taxes or fees is the same rate as is charged for unpaid or delinquent taxes. For the purposes of this subsection, interest charged for unpaid or delinquent taxes is the interest rate determined in subsection ~~(4)(a)(i)~~ ~~(6)(a)(i)~~ (5)(A). (Bracketed language in subsection ~~(5)(a)~~ ~~(7)(a)~~ (6)(A) terminates June 30, 2020--sec. 18, Ch. 288, L. 2005.)"

Section 4. ~~Section 15-30-101, MCA, is amended to read:~~

~~"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:~~

~~(1) "Base year structure" means the following elements of the income tax structure:~~

~~(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable tax year;~~

~~(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable tax year;~~

~~(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable tax year.~~

~~(2) "Consumer price index" means the consumer price index, United States city average, for all items, for all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.~~

~~(3) "Corporation" or "C. corporation" means a corporation, limited liability company, or other entity:~~

~~(a) that is treated as an association for federal income tax purposes;~~

~~_____ (b) for which a valid election under section 1362 of the Internal Revenue Code, (26 U.S.C. 1362), is not in effect; and~~

~~_____ (c) that is not a disregarded entity.~~

~~_____ (4) "Department" means the department of revenue.~~

~~_____ (5) "Disregarded entity" means a business entity:~~

~~_____ (a) that is disregarded as an entity separate from its owner for federal tax purposes, as provided in United States treasury regulations 301.7701-2 or 301.7701-3, 26 CFR 301.7701-2 or 26 CFR 301.7701-3, or as those regulations may be labeled or amended; or~~

~~_____ (b) that is a qualified subchapter S subsidiary that is not treated as a separate corporation, as provided in section 1361(b)(3) of the Internal Revenue Code, (26 U.S.C. 1361(b)(3)).~~

~~_____ (6) "Dividend" means:~~

~~_____ (a) any distribution made by a C corporation out of its earnings and profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends; and~~

~~_____ (b) any distribution made by an S corporation treated as a dividend for federal income tax purposes.~~

~~_____ (7) "Electing small business trust" has the meaning provided in section 1361 of the Internal Revenue Code, 26 U.S.C. 1361.~~

~~_____ (7)(8) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.~~

~~_____ (8)(9) "Foreign C corporation" means a corporation that is not engaged in or doing business in Montana, as provided in 15-31-101.~~

~~_____ (9)(10) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.~~

~~_____ (10)(11) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code, (26 U.S.C. 61), or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code, (26 U.S.C. 85) as amended.~~

~~_____ (11)(12) "Inflation factor" means a number determined for each tax year by dividing the consumer price index for June of the tax year by the consumer price index for June 2005.~~

~~_____ (12)(13) "Information agents" includes all individuals and entities acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having~~

~~the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.~~

~~———— (13)(14) "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, or as it may be labeled or further amended. References to specific provisions of the Internal Revenue Code mean those provisions as they may be otherwise labeled or further amended.~~

~~———— (14)(15) "Knowingly" is as defined in 45-2-101.~~

~~———— (15)(16) "Limited liability company" means a limited liability company, domestic limited liability company, or a foreign limited liability company as defined in 35-8-102.~~

~~———— (16)(17) "Limited liability partnership" means a limited liability partnership as defined in 35-10-102.~~

~~———— (17)(18) "Lottery winnings" means income paid either in lump sum or in periodic payments to:~~

~~———— (a) a resident taxpayer on a lottery ticket; or~~

~~———— (b) a nonresident taxpayer on a lottery ticket purchased in Montana.~~

~~———— (18)(19) (a) "Montana source income" means:~~

~~———— (i) wages, salary, tips, and other compensation for services performed in the state or while a resident of the state;~~

~~———— (ii) gain attributable to the sale or other transfer of tangible property located in the state, sold or otherwise transferred while a resident of the state, or used or held in connection with a trade, business, or occupation carried on in the state;~~

~~———— (iii) gain attributable to the sale or other transfer of intangible property received or accrued while a resident of the state;~~

~~———— (iv) interest received or accrued while a resident of the state or from an installment sale of real property or tangible commercial or business personal property located in the state;~~

~~———— (v) dividends received or accrued while a resident of the state;~~

~~———— (vi) net income or loss derived from a trade, business, profession, or occupation carried on in the state or while a resident of the state;~~

~~———— (vii) net income or loss derived from farming activities carried on in the state or while a resident of the state;~~

~~———— (viii) net rents from real property and tangible personal property located in the state or received or accrued while a resident of the state;~~

~~———— (ix) net royalties from real property and from tangible real property to the extent the property is used in~~

~~the state or the net royalties are received or accrued while a resident of the state. The extent of use in the state is determined by multiplying the royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the royalty period in the tax year and the denominator of which is the number of days of physical location of the property everywhere during all royalty periods in the tax year. If the physical location is unknown or unascertainable by the taxpayer, the property is considered used in the state in which it was located at the time the person paying the royalty obtained possession.~~

~~_____ (x) patent royalties to the extent the person paying them employs the patent in production, fabrication, manufacturing, or other processing in the state, a patented product is produced in the state, or the royalties are received or accrued while a resident of the state;~~

~~_____ (xi) net copyright royalties to the extent printing or other publication originates in the state or the royalties are received or accrued while a resident of the state;~~

~~_____ (xii) partnership income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:~~

~~_____ (A) derived from a trade, business, occupation, or profession carried on in the state;~~

~~_____ (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or~~

~~_____ (C) taken into account while a resident of the state;~~

~~_____ (xiii) an S. corporation's separately and nonseparately stated income, gain, loss, deduction, or credit or item of income, gain, loss, deduction, or credit:~~

~~_____ (A) derived from a trade, business, occupation, or profession carried on in the state;~~

~~_____ (B) derived from the sale or other transfer or the rental, lease, or other commercial exploitation of property located in the state; or~~

~~_____ (C) taken into account while a resident of the state;~~

~~_____ (xiv) social security benefits received or accrued while a resident of the state;~~

~~_____ (xv) taxable individual retirement account distributions, annuities, pensions, and other retirement benefits received while a resident of the state; and~~

~~_____ (xvi) any other income attributable to the state, including but not limited to lottery winnings, state and federal tax refunds, nonemployee compensation, recapture of tax benefits, and capital loss addbacks.~~

~~_____ (b) The term does not include:~~

~~_____ (i) compensation for military service of members of the armed services of the United States who are not Montana residents and who are residing in Montana solely by reason of compliance with military orders and does not include income derived from their personal property located in the state except with respect to personal~~

property used in or arising from a trade or business carried on in Montana; or

—— (ii) interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located in the state, if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.

—— (19)(20) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

—— (20)(21) "Nonresident" means a natural person who is not a resident.

—— (21)(22) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

—— (22)(23) "Partner" means a member of a partnership or a manager or member of any other entity, if treated as a partner for federal income tax purposes.

—— (23)(24) "Partnership" means a general or limited partnership, limited liability partnership, limited liability company, or other entity, if treated as a partnership for federal income tax purposes.

—— (24)(25) "Pass-through entity" means a partnership, an S corporation, or a disregarded entity.

—— (25)(26) "Pension and annuity income" means:

—— (a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

—— (b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

—— (c) lump-sum distributions from pension or profit-sharing plans to the extent that the distributions are included in federal adjusted gross income;

—— (d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code, (26 U.S.C. 401 through 408), to the extent that the distributions are not considered to be premature distributions for federal income tax purposes;

or

—— (e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

VERY UNOFFICIAL GRAY BILL -- February 22, 2007 (1:18pm)

~~———— (26)(27) "Purposely" is as defined in 45-2-101.~~

~~———— (27)(28) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.~~

~~———— (28)(29) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable tax year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.~~

~~———— (29)(30) "S. corporation" means an incorporated entity for which a valid election under section 1362 of the Internal Revenue Code, (26 U.S.C. 1362), is in effect.~~

~~———— (30)(31) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.~~

~~———— (31)(32) "Tax year" means the taxpayer's taxable tax year for federal income tax purposes.~~

~~———— (32)(33) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.~~

~~———— (33)(34) "Taxpayer" includes any person, entity, or fiduciary, resident or nonresident, subject to a tax or other obligation imposed by this chapter and unless otherwise specifically provided does not include a C corporation."~~

Section 4. Section 15-30-112, MCA, is amended to read:

"15-30-112. Exemptions. (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) must be allowed as deductions in computing taxable income.

(2) (a) An exemption of \$1,900 is allowed for all taxpayers.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's tax year.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of the tax year and, for the

VERY UNOFFICIAL GRAY BILL -- February 22, 2007 (1:18pm)

calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of \$1,900 is allowed for the taxpayer if the taxpayer is blind at the close of the taxpayer's tax year.

(b) An additional exemption of \$1,900 is allowed for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the tax year of the taxpayer begins, does not have gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind must be made as of the close of the tax year of the taxpayer, except that if the spouse dies during the tax year, the determination must be made as of the time of death.

(c) For purposes of this subsection (4), an individual is blind only if the person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision to an extent that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of \$1,900 is allowed for each dependent:

(i) whose gross income for the calendar year in which the tax year of the taxpayer begins is less than \$800 the exemption amount provided in subsection (2)(a); or

(ii) who is a qualifying child of the taxpayer and who:

~~_____ (A) has not attained the age of 19 years at the close of the calendar year in which the tax year of the taxpayer begins as defined in section 152 of the Internal Revenue Code, 26 U.S.C. 152,; or~~

~~_____ (B) is including a student as defined in that section.~~

(b) An exemption is not allowed under this subsection (5) for a dependent who has made a joint return with the dependent's spouse for the tax year beginning in the calendar year in which the tax year of the taxpayer begins.

~~(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.~~

~~_____ (d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the tax year of the taxpayer begins:~~

~~_____ (i) is a full-time student at an educational institution; or~~

~~_____ (ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection~~

(5)(d)(ii), the term "educational institution" means only an educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that tax year and round the product to the nearest \$10. The resulting adjusted exemptions are effective for that tax year and must be used in calculating the tax imposed in 15-30-103."

Section 6. Section 15-30-135, MCA, is amended to read:

~~"15-30-135. Tax on beneficiaries or fiduciaries of estates or trusts. (1) A tax shall be is imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided in this section, except to the extent such unless the estates and trusts shall be are held for educational, charitable, or religious purposes, which. If an estate or trust held for educational, charitable, or religious purposes has unrelated business taxable income as defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512, or as otherwise provided for federal income tax purposes, the tax is imposed with respect to the unrelated business taxable income. The tax shall must be levied, collected, and paid annually with respect to the income of estates or of any kind of property held in trust, including:~~

~~—— (a) income received by estates of deceased persons during the period of administration or settlement of the estate;~~

~~—— (b) income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;~~

~~—— (c) income held for future distribution under the terms of the will or trust; and~~

~~—— (d) income which that is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of a minor, to be held or distributed as the court may direct.~~

~~—— (2) The fiduciary shall be is responsible for making the return of income for the estate or trust for which he the fiduciary acts, whether the fiduciary or the beneficiaries are taxable with reference to the income of such the estate or trust. In cases under subsections (a) and (d) of subsection (1) (1)(a) and (1)(d), the fiduciary shall include in the return a statement of each beneficiary's distributive share of net income, whether or not distributed before the close of the taxable tax year for which the return is made.~~

~~—— (3) In cases under subsections (a), (b), and (c) of subsection (1) (1)(a), (1)(b), and (1)(c), the tax shall be is imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall must be paid by the fiduciary. If the taxpayer's net income for the taxable tax year of the estate or trust is~~

computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his ~~the taxpayer's~~ distributive share of the net income of the estate or trust for any accounting period of such ~~the~~ estate or trust ending within the fiscal or calendar year shall must be computed upon the basis on which such ~~the~~ beneficiary's net income is computed. In such those cases, a beneficiary who is not a resident shall be is taxable with respect to his the beneficiary's income derived through such ~~the~~ estate or trust only to the extent provided in 15-30-131 for individuals other than residents.

~~_____ (4) The Except as provided in 15-30-137(4), the fiduciary of a trust created by an employer as a part of a stock bonus, pension, or profit-sharing plan for the exclusive benefit of some or all of his the employer's employees, to which contributions are made by such the employer or employees, or both, for the purpose of distributing to such the employees the earnings and principal of the fund accumulated by the trust in accordance with such the plan, shall is not be taxable under this section, but any amount contributed to such the fund by the employer and all earnings of such the fund shall must be included in computing the income of the distributee in the year in which distributed or made available to him the distributee.~~

~~_____ (5) Where if any part of the income of a trust other than a testamentary trust is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor, (except policies of insurance irrevocably payable for the purposes and in the manner specified relating to the so-called "charitable contribution" deduction), or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such that part of the income of the trust shall must be included in computing the net income of the grantor.~~

~~_____ (6) If there is an allocation or any synthetic equity described in section 4979A of the Internal Revenue Code, 26 U.S.C. 4979A, a tax equal to 50% of the amount involved is imposed on and must be paid by the person on whom the tax is imposed as provided in section 4979A(c) of the Internal Revenue Code, 26 U.S.C. 4979A(c)."~~

Section 5. Section 15-30-136, MCA, is amended to read:

"15-30-136. Computation of income of estates or trusts -- exemption. (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the tax year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision of the state, but excluding interest income from

obligations of:

- (i) the United States government or the state of Montana;
 - (ii) a school district; or
 - (iii) a county, municipality, district, or other political subdivision of the state;
 - (c) income from partnerships and other fiduciaries;
 - (d) gross rents and royalties;
 - (e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954 (now deleted);
 - (f) gross profit from trade or business; and
 - (g) refunds recovered on federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.
- (2) In computing net income, there are allowed as deductions:
- (a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code, 26 U.S.C. 163;
 - (b) taxes paid or accrued within the tax year, including but not limited to up to \$5,000 of federal income tax paid, but excluding Montana income tax;
 - (c) that fiduciary's portion of depreciation or depletion that is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code, 26 U.S.C. 167, 611, and 642;
 - (d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code, 26 U.S.C. 642(c);
 - (e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code, 26 U.S.C. 212 and 642(g);
 - (f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code, 26 U.S.C. 165;
 - (g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code, 26 U.S.C. 642(d), except estates may not claim losses that are deductible on the decedent's final return;
 - (h) Montana income tax refunds or tax refund credits.
- (3) The following additional deductions are allowed in deriving taxable income of estates and trusts:
- (a) any amount of income for the tax year currently required to be distributed to beneficiaries for the

year;

(b) any other amounts properly paid or credited or required to be distributed for the tax year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 8. Section 15-30-137, MCA, is amended to read:

~~"15-30-137. Determination of tax of estates and trusts. (1) The Except as provided in subsections (2) and (4), the amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the rates contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable.~~

~~(2) A tax on the taxable income of an electing small business trust, determined as provided in subsection (3), is imposed on the fiduciary at the highest rate provided in 15-30-103 and must be paid by the fiduciary.~~

~~(3)(a) In determining the taxable income of an electing small business trust, the portion of the trust that consists of stock in one or more S. corporations must be treated as a separate trust and the amount of tax imposed on the separate trust must be determined with the modifications described in subsection (3)(b):~~

~~(b) In determining the gross, net, and taxable income of an electing small business trust:~~

~~(i) the exemption amount is zero;~~

~~(ii) the only items of income, loss, deduction, or credit that may be taken into account are:~~

~~(A) the items required to be taken into account under section 1366 of the Internal Revenue Code, 26 U.S.C. 1366;~~

~~(B) gain or loss from the sale, transfer, or other disposition of the stock of the S. corporation; and~~

~~(C) administrative expenses allocated to the items described in subsection (3)(b)(ii)(A) and (3)(b)(ii)(B) for federal income tax purposes.~~

~~(4) (a) Except as provided in subsection (4)(b), if a trust or organization described in section 1361(c)(2)(A)(iv) or 1361(c)(6) of the Internal Revenue Code, 26 U.S.C. 1361(c)(2)(A)(iv) or 1361(c)(6), holds stock in an S. corporation:~~

~~(i) the interest in the S. corporation is treated as an unrelated trade or business;~~

~~(ii) all items of income, loss, or deduction taken into account under section 1366(a) of the Internal Revenue Code, 26 U.S.C. 1366(a), and any gain or loss on the sale, transfer, or other disposition of the stock in the S. corporation are included in computing the unrelated business taxable income of the trust or organization;~~

~~(iii) the unrelated business taxable income of the trust or organization is taxed at the rate provided in~~

~~15-31-121; and~~

~~— (iv) the basis of any stock acquired by purchase as defined in section 1361(e)(1)(C) of the Internal Revenue Code, 26 U.S.C. 1361(e)(1)(C), must be reduced by the amount of any dividends received by the trust or organization with respect to the stock.~~

~~— (b) The provisions of subsection (4)(a) do not apply to employer securities within the meaning of section 409(l) of the Internal Revenue Code, 26 U.S.C. 409(l), held by an employee stock ownership plan as defined in section 4975(e)(7) of the Internal Revenue Code, 26 U.S.C. 4975(e)(7)."~~

Section 6. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing -- extensions of time. (1) A return must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be annexed to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this chapter. Each taxpayer liable for a tax under this chapter shall pay a minimum tax of \$1.

(2) ~~An automatic 4-month extension of time for filing a return is allowed, provided that:~~

~~— (a) on or before the due date of the return, the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.~~

~~— (b) the taxpayer has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability. A taxpayer is allowed an automatic extension of time for filing the taxpayer's return of up to 6 months following the date prescribed for filing of the tax return. The tax, penalty, and interest must be paid when the return is filed. Penalty and interest must be added to the tax due as provided in 15-1-216. The department may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists.~~

(3) An additional 2-month extension of time for filing a return is automatically allowed provided that the taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and has satisfied the requirements of

subsection (2)(b). The extension of time for filing a return is not an extension of time for the payment of taxes."

Section 7. Section 15-30-149, MCA, is amended to read:

"15-30-149. Credits and refunds -- period of limitations. (1) If the department discovers from the examination of a return or upon a claim filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment must be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of the excess must be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if:

(i) prior to the expiration of the period provided by 15-30-146 and 15-30-147, the taxpayer files a claim or the department determines there has been an overpayment; or

(ii) the claim for a credit or refund is made within 1 year of the overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the tax year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall notify the taxpayer and a review of the determination of the department may be pursued as provided in 15-1-211.

(4) (a) Interest is allowed on overpayments at the same rate as charged on delinquent taxes as provided in 15-1-216. Interest Except as provided in subsection (4)(b), interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the tax year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to the taxpayer's estimated tax for the succeeding ~~taxable~~ tax year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

~~(a)~~(i) the overpayment is refunded within 45 days from the date the return is due or the date the return is filed, whichever date is later;

(b)(ii) the overpayment results from the carryback of a net operating loss; or

(c)(iii) the amount of interest is less than \$1.

(b) Subject to the provisions of subsection (4)(a)(i), in the case of a return filed after the time prescribed for filing in 15-30-144, including any extension, interest is payable from the date the return was filed.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 8. Section 15-30-301, MCA, is amended to read:

"15-30-301. Information agents' duties. (1) ~~Every~~ Each information agent shall make a return to the department of complete information concerning the following distributions made for any individual during the taxable tax year upon which ~~no withholding tax has not been deducted.~~

(a) sums in excess of \$10 distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code, 26 U.S.C. 6049, royalties, and payments made under a retirement plan covering an owner-employee as defined in section 401(c)(3) of the Internal Revenue Code, 26 U.S.C. 401(c)(3);

(b) all interest income in excess of \$10 from obligations of another state and a county, municipality, district, or other political subdivision of that state;

(c) interest, other than that specified in subsections (1)(a) and (1)(b), rents, salaries, wages, prizes, awards, annuities, pensions, and other fixed or determinable gains, profits, and income in excess of \$600, except interest coupons payable to the bearer;

(d) proceeds from real estate transactions that are required to be reported under rules or regulations of the United States department of the treasury.

(2) The return must be made under ~~the regulations~~ rules adopted by the department and in the form and manner prescribed by the department. For ease of reporting, the form must be as nearly identical to the comparable federal form as possible."

Section 9. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual

VERY UNOFFICIAL GRAY BILL -- February 22, 2007 (1:18pm)

return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must be preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding \$1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(b) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' compensation program.

VERY UNOFFICIAL GRAY BILL -- February 22, 2007 (1:18pm)

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice:

(i) all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(ii) all information necessary for the investigation and prevention of medicaid fraud, for the purposes of enabling the department of justice to administer 53-2-501; and

(iii) all information necessary for investigation and prevention of crimes and fraud, for the purposes of enabling the department of justice to administer 44-2-115;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transportation farm income information based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 or 15-70-362, provided that notice to the applicant has been given as provided in 15-70-223 and 15-70-362. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns.

(h) to the commissioner of insurance's office all information necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20;

(i) to the commissioner of insurance's office information necessary for the administration of Title 33, chapter 12;

(j) to the office of securities commissioner information necessary for the administration of Title 30, chapter 10."

Section 10. Section 15-31-511, MCA, is amended to read:

"15-31-511. Confidentiality of tax records. (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to knowingly divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1);

(c) provide to the commissioner of insurance's office information necessary for the administration of Title 33, chapter 12; and

(d) provide to the office of securities commissioner information necessary for the administration of Title 30, chapter 10.

(5) A person convicted of violating this section shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this section, the person forfeits office and may not hold any public office or public employment in the

state for a period of 1 year after conviction."

Section 11. Section 15-35-104, MCA, is amended to read:

"15-35-104. Quarterly statement and payment of tax. Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement ~~shall~~ must indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and ~~such any~~ other information as that the department may require. ~~Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter.~~ The completed form ~~in duplicate~~, with the tax payment, ~~shall~~ must be delivered to the department not later than 30 days following the close of the quarter. The form ~~shall~~ must be signed by the operator if the operator is an individual or by an officer of the coal mine operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of his ~~the operator's~~ mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown ~~therefor~~."

Section 12. Section 15-36-313, MCA, is amended to read:

"15-36-313. Procedure to compute tax in absence of statement -- estimation of tax -- failure to file penalty and interest. (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall, ~~immediately after the time has expired~~, ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of gas produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive any penalty pursuant to 15-1-206."

Section 13. Section 15-39-105, MCA, is amended to read:

"15-39-105. Penalties and interest for violation. (1) ~~(a)~~ A person who fails to file a statement as required by 15-39-102 must be assessed a penalty as provided in 15-1-216. The department may waive the

penalty as provided in 15-1-206.

(b) (2) A person who fails to file the statement required by 15-39-102 and OR to pay the tax before the due date must be assessed a penalty PENALTIES and interest as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

~~(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in 15-1-216(1)(d) 15-1-216(4)."~~

Section 14. Section 15-39-107, MCA, is amended to read:

"15-39-107. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the statement and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by ~~15-1-216(1)(c)~~ 15-1-216(2) must be added to the amount of the deficiency."

~~**Section 18.** Section 17-7-502, MCA, is amended to read:~~

~~**"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.~~

~~(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:~~

~~(a) The law containing the statutory authority must be listed in subsection (3).~~

~~(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.~~

~~(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504;~~

VERY UNOFFICIAL GRAY BILL -- February 22, 2007 (1:18pm)

~~44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; and 90-9-306.~~

~~———— (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"~~

Section 15. Section 72-3-1006, MCA, is amended to read:

"72-3-1006. Certificate. (1) In probate proceedings under this code requiring the filing of a duplicate United States estate tax return with the department of revenue pursuant to 72-16-906, a final distribution to successors may not be made and petitions may not be granted under 72-3-1001, 72-3-1002, 72-3-1003, or 72-3-1004, unless there has been filed with the clerk:

(a) a certificate from the department of revenue stating that any estate tax due on the assets of the estate has been paid or that no tax is payable; or

(b) an agreement with the department of revenue for extension of time for payment of estate taxes.

(2) This section does not prohibit a partial distribution that may become necessary in the course of administration."

NEW SECTION. Section 20. Repealer. Section 15-1-113, MCA, is repealed:

NEW SECTION. Section 16. Effective date. [This act] is effective on passage and approval.

NEW SECTION. **Section 17. Applicability.** (1) Except as provided in ~~subsection~~ SUBSECTIONS (2)
AND (3), [this act] applies to tax periods beginning after December 31, 2007.

(2) ~~[Section 3(5)3(4)]~~, ~~amending subsection (5) of 15-1-216~~, applies to returns or reports filed after June 30, 2007.

(3) [SECTIONS 2, 9, AND 10] APPLY ON [THE EFFECTIVE DATE OF THIS ACT].

- END -

GRAY

BILL

Amendments to Senate Bill No. 174
1st Reading Copy

Adopted by Senate Taxation Committee

Prepared by Lee Heiman
March 12, 2007 (8:41am)

1. Title, line 7 through line 11.

Strike: the second "CLARIFYING" on line 7 through "LAW;" on line 11

2. Title, line 12 through line 13.

Strike: "PROVIDING" on line 12 through "REPORTING;" on line 13

3. Title, line 21.

Strike: "15-30-101,"

Strike: "15-30-135,"

Strike: "15-30-137,"

4. Title, line 22.

Strike: "17-7-502,"

5. Title, line 23.

Strike: "REPEALING SECTION 15-1-113, MCA;"

6. Page 3, line 11.

Strike: "or fraction of a month"

7. Page 3, line 14.

Strike: "or fraction of a month"

8. Page 3.

Following: line 15

Insert: "(c) The penalties provided in subsections (2)(a) and (2)(b) on delinquent taxes and on deficiency assessments are computed from the original due date of the return until the tax is paid. The penalty accrues daily on the unpaid tax from the original due date of the return regardless of whether the taxpayer has received an extension of time for filing the return."

Renumber: subsequent subsections

9. Page 3, line 18.

Strike: "\$1,500"

Insert: "\$2,500"

10. Page 3, line 22.

Strike: "(2)(c)(iv)"

Insert: "subsection (2)(d)(iv)"

11. Page 3, line 27 through line 28.
Strike: subsection (d) in its entirety
12. Page 3, line 29 through page 4, line 2.
Strike: subsection (3) in its entirety
Renumber: subsequent subsections
13. Page 4, line 9.
Following: "return or"
Insert: "purposely or knowingly"
14. Page 4, line 14.
Following: "return or"
Insert: "purposely or knowingly"
15. Page 4, line 17.
Strike: "(6) (a) (i)"
Insert: "(5) (a) (i)"
16. Page 4, line 18.
Strike: "(6) (a)"
Insert: "(5) (a)"
17. Page 4, line 25.
Following: "12%"
Insert: "a year"
18. Page 4, line 29.
Strike: "(7) (b)"
Insert: "(6) (b)"
19. Page 5, line 12.
Strike: "(6) (a) (i)"
Insert: "(5) (a)"
Strike: "(7) (a)"
Insert: "(6) (a)"
20. Page 5, line 15 through page 10, line 20.
Strike: section 4 in its entirety
Renumber: subsequent sections
21. Page 12, line 11 through page 13, line 26.
Strike: section 6 in its entirety
Renumber: subsequent sections
22. Page 15, line 9 through page 16, line 11.
Strike: section 8 in its entirety
Renumber: subsequent sections

23. Page 21, line 16.

Strike: "└"

24. Page 21, line 17.

Strike: "chapter 12"

25. Page 23, line 4.

Strike: ", chapter 12"

26. Page 24, line 9.

Strike: "(a)"

27. Page 24, line 12.

Strike: "(b)"

Insert: "(2)"

Following: "15-39-102"

Strike: "and"

Insert: "or"

28. Page 24, line 13.

Strike: "a penalty"

Insert: "penalties"

29. Page 24, line 15 through line 16.

Strike: subsection (2) in its entirety

30. Page 24, line 26 through page 25, line 27.

Strike: section 18 in its entirety

Renumber: subsequent sections

31. Page 26, line 10.

Strike: section 20 in its entirety

Renumber: subsequent sections

32. Page 26, line 14.

Strike: "subsection"

Insert: "subsections"

Following: "(2)"

Insert: "and (3)"

33. Page 26, line 16.

Strike: "3(5)"

Insert: "3(4)"

Strike: ", amending subsection (5) of 15-1-216,"

34. Page 26.

Following: line 17

Insert: "(3) [Sections 2, 9, and 10] apply on [the effective date of this act]."